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CLERK US DISTRICT COURT  
CENTRAL DISTRICT CALIF.  
LOS ANGELES

FILED

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 KEN BARRETTE,

11 Plaintiff,

12 v.

13 COSTCO WHOLESALE  
14 CORPORATION, A Washington  
15 Corporation; FRIEDA MANDEL,  
16 TRUSTEE OF THE FRIEDA MANDEL  
LIVING TRUST, and DOES 1 through 10,  
inclusive

17 Defendants.

18 } Case No.: CV08-03825JFW

19 } COMPLAINT FOR DAMAGES AND EX)  
INJUNCTIVE RELIEF FOR  
VIOLATIONS OF: AMERICAN'S  
WITH DISABILITIES ACT; UNRUH  
CIVIL RIGHTS ACT; CALIFORNIA  
DISABLED PERSONS ACT;  
NEGLIGENCE  
20 }  
21 } DEMAND FOR JURY

22 Plaintiff KEN BARRETTE complains of Defendants COSTCO WHOLESALE  
CORPORATION, A Washington Corporation; FRIEDA MANDEL, TRUSTEE OF  
THE FRIEDA MANDEL LIVING TRUST, and DOES 1 through 10, inclusive,  
(hereinafter referred to as "Defendants") and alleges as follows:

23 JURISDICTION AND VENUE:

24 1. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28  
U.S.C. § 1331 for violations of the Americans with Disabilities Act of 1990, 42  
U.S.C. § 12101, et seq. Pursuant to supplemental jurisdiction, an attendant and  
related cause of action, arising from the same nucleus of operative facts and arising  
out of the same transactions, is also brought under California state law.

1           2.         **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §  
2           1391(b) and is founded on the fact that the improved real property which is the  
3           subject of this action is located in this district and that Plaintiff's causes of action  
4           arose in this district.

5 **PARTIES:**

6           3. Plaintiff is a California resident who suffers from multiple sclerosis. He  
7           requires an electric wheelchair for mobility and a full time caregiver to assist him.

8           4. Defendants are or were at the time of the incident the owners and operators  
9           and/or lessors and lessees of the warehouse store located at 1335 S. Bradley Road,  
10           Santa Maria, California.

11 **FACTUAL ALLEGATIONS:**

12           5. The warehouse store is a facility open to the public, a place of public  
13           accommodation, and a business establishment.

14           6. Plaintiff went to the warehouse store on April 22, 2007, with his wife,  
15           daughters and friends to purchase groceries.

16           7. During Plaintiff's visit, he encountered various violations of the  
17           Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24  
18           of the California Code of Regulations, including, but not limited to, the accessible  
19           parking was not properly configured and not accessible from the front of the vehicle,  
20           and Defendants' employee had parked his car in the access aisle of a disabled  
21           accessible parking place, thus eliminating a disabled accessible parking space for  
22           use by Plaintiff in parking his van, by creating a barrier to its use, and when the  
23           Plaintiff complained to Defendants, he was informed that Defendants' employee  
24           parks his car in the access aisle.

25           8. Naturally, plaintiff BARRETTE was frustrated, angry and/or vexed as a  
26           result of encountering these conditions, these violations of his civil rights, and the  
27           lack of safe, convenient and accessible facilities. Although these injuries are modest  
28           in scope and did not result in any loss of wages or economic damage or medical care

1 or attention, the continued violation of the plaintiff's civil rights by these defendants  
2 and the highly unpleasant emotional distress caused by such unlawful treatment is  
3 attributable to the actions or inactions of the defendants and plaintiff seeks redress  
4 from these defendants for such injury.

5 Plaintiff would like to return and patronize the Defendants' warehouse  
6 store but because of plaintiff's knowledge of the existence of the inaccessible  
7 conditions, the plaintiff is unable to use the warehouse store on a "full and equal"  
8 basis until the retail store is brought into compliance with the provisions of the  
9 Americans with Disabilities Act Accessibility Guidelines and state accessibility law  
10 as pled herein. Plaintiff has been and currently is being deterred from returning and  
11 patronizing the Defendants' warehouse store.

12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**  
13 **DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against All Defendants (42**  
14 **U.S.C. section 12101, et seq.)**

15 **10.** The defendants are persons who either own, operate, lease or lease to a  
16 place of public accommodation. As such, the Defendants are required to (1) ensure  
17 that all construction, alteration, or modification is barrier free and complies with the  
18 Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24  
19 of the California Code of Regulations (aka "California Building Code"); and/or (2)  
20 remove all existing barriers where such removal is "readily achievable." The  
21 Defendants have failed to meet these obligations. The existence of readily  
22 achievably removed barriers and barriers in violation of the ADAAG and/or  
23 California Building Code, including, but not limited to, the accessible parking was  
24 not properly configured and not accessible from the front of the vehicle, and  
25 Defendants' employee had parked his car in the access aisle of a disabled accessible  
26 parking place, thus eliminating a disabled accessible parking space for use by  
27 Plaintiff in parking his van, by creating a barrier to its use, and when the Plaintiff  
28 complained to Defendants, he was informed that Defendants' employee parks his  
car in the access aisle, is unlawful and has resulted in the defendants' failure to

1 provide full and equal accommodations, advantages, facilities, privileges and/or  
2 services to the plaintiff.

3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
4 RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)**

5       **11.** The defendants are persons who either own, operate, lease or lease to a  
6 place of public accommodation or business establishment. As such, the Defendants  
7 are required to (1) ensure that all construction, alteration, or modification is barrier  
8 free and complies with the Americans with Disabilities Act Accessibility Guidelines  
9 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California  
10 Building Code"); and (2) remove all existing barriers where such removal is "readily  
11 achievable." The Defendants have failed to meet these obligations. The Defendants  
12 intended the physical and architectural condition of their property. The existence of  
13 readily achievable removed barriers and barriers in violation of the ADAAG and/or  
14 California Building Code, including, but not limited to, the accessible parking was  
15 not properly configured and not accessible from the front of the vehicle, and  
16 Defendants' employee had parked his car in the access aisle of a disabled accessible  
17 parking place, thus eliminating a disabled accessible parking space for use by  
18 Plaintiff in parking his van, by creating a barrier to its use, and when the Plaintiff  
19 complained to Defendants, he was informed that Defendants' employee parks his  
20 car in the access aisle, is unlawful and has resulted in the defendants' failure to  
21 provide full and equal accommodations, advantages, facilities, privileges and/or  
22 services to the plaintiff.

23 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA  
24 DISABLED PERSONS ACT (On behalf of Plaintiff and Against All  
25 Defendants) (Cal Civ § 54-54.8)**

26       **12.** The defendants are persons who either own, operate, lease or lease to a  
27 place of public accommodation or a facility open to the public. As such, the  
28 Defendants are required to (1) ensure that all construction, alteration, or  
modification is barrier free and complies with the Americans with Disabilities Act

1 Accessibility Guidelines ("ADAAG") and Title 24 of the California Code of  
 2 Regulations (aka "California Building Code"); and (2) remove all existing barriers  
 3 where such removal is "readily achievable." The Defendants have failed to meet  
 4 these obligations. The existence of readily achievable removed barriers and barriers  
 5 in violation of the ADAAG and/or California Building Code, including, but not  
 6 limited to, the accessible parking was not properly configured and not accessible  
 7 from the front of the vehicle, and Defendants' employee had parked his car in the  
 8 access aisle of a disabled accessible parking place, thus eliminating a disabled  
 9 accessible parking space for use by Plaintiff in parking his van, by creating a barrier  
 10 to its use, and when the Plaintiff complained to Defendants, he was informed that  
 11 Defendants' employee parks his car in the access aisle, is unlawful and has resulted  
 12 in the defendants' failure to provide full and equal accommodations, advantages,  
 13 facilities, privileges and/or services to the plaintiff.

14 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE (On behalf of Plaintiff and**  
**Against All Defendants)**

15       **13.** The defendants had a general duty and a duty arising under the Americans  
 16 with Disabilities Act and the Unruh Civil Rights Act and California Disabled  
 17 Persons Act to provide safe, convenient, and accessible facilities to the plaintiff in  
 18 the running of their warehouse store business. Their breach of this duty, as alleged  
 19 in the preceding paragraphs, has caused injury and damage as alleged above.

20 **PRAYER:**

21       Wherefore, Plaintiff prays that this court award damages and provide relief as  
 22 follows:

23       **1.** For injunctive relief, compelling Defendants to comply with the Americans  
 24 with Disabilities Act and the Unruh Civil Rights Act. **Note:** the plaintiff is not  
 25 invoking section 55 of the California Civil Code and is not seeking injunctive relief  
 26 under that section.

27       **2.** Damages under the Unruh Civil Rights Act and/or the California Disabled

1 Persons Act. **Note:** A defendant cannot be held liable for damages under both the  
2 Unruh Civil Rights Act and the California Disabled Persons Act and the plaintiff will  
3 make an election at trial depending upon the evidence amassed.

4       **3.** Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to  
5 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

6 Dated: June 3, 2008            CENTER FOR DISABILITY ACCESS, LLP  
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8           By:   
9                                   MARK D. POTTER  
10                                   Attorneys for Plaintiff

11                                   **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

13 Dated: June 3, 2008            CENTER FOR DISABILITY ACCESS, LLP  
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15           By:   
16                                   MARK D. POTTER  
17                                   Attorneys for Plaintiff